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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 07.07.2025***

+ **C.R.P. 175/2023 & CM Appl.34690/2023**

USHA RANI

.....Petitioner

Through: Mr. Ajay Kumar Tandon, Ms. Tanya
Sharma, Ms. Sanskriti and Mr. Aditya
M. Saran, Adv.

versus

RAJESH GROVER

.....Respondent

Through: Mr. Pankaj Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] impugning the order dated 16.01.2023 passed by the learned ADJ-03 (North), Rohini Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11(d) of the CPC has been dismissed by the learned Trial Court.

2. Learned Counsel for the Petitioner/Defendant limits his challenge in the present Petition to the issue of limitation. He submits that the proceedings emanate from a suit for specific performance of contract, possession and permanent injunction filed by the Respondent/Plaintiff on 19.04.2016.

2.1 Learned Counsel for the Petitioner/Defendant submits that the plaint that was filed by the Respondent/Plaintiff was barred by limitation and



hence, the Application under Order VII Rule 11(d) of the CPC was filed by the Petitioner/Defendant.

3. Learned Counsel for the Respondent/Plaintiff, on the other hand, submits that there was no date fixed for specific performance of the contract and thus, under the second part of Article 54 to Schedule I to the Limitation Act, 1963 [hereinafter referred to as “Act”], the limitation would be calculated three years from when the notice of performance was refused.

3.1 Relying on a legal notice dated 27.04.2013, learned Counsel for the Respondent/Plaintiff submits that the notice was sent in April, 2013 and served in terms of the acknowledgment on 10.05.2013 and since there was no response to the notice, the date of refusal should be taken as the date of service i.e., 10.05.2013.

3.2 Learned Counsel for the Respondent/Plaintiff thus submits that the plaint filed on 19.04.2016 was within limitation.

3.3 Learned Counsel for the Respondent/Plaintiff has also made one submission that Section 14 of the Act extends limitation for filing the plaint. Learned Counsel for the Petitioner/Defendant, on the other hand, has relied on the fact that the benefit of Section 14 of the Act was sought for by the Respondent/Plaintiff before the learned Trial Court which has also been refused by the learned Trial Court in the Impugned Order holding that the Respondent/Plaintiff is not entitled to the benefit of Section 14 of the Act.

3.4 Learned Counsel for the Respondent/Plaintiff submits that this finding of the learned Trial Court has not been challenged by the



Respondent/Plaintiff and thus, has attained finality.

4. For the purpose of ascertaining the limitation, it is apposite to set out the following brief facts:

(i) An agreement for sale and purchase between the Petitioner/Defendant and the Respondent/Plaintiff was executed on 23.08.2011 [hereinafter referred to as “Agreement”];

(ii) Clause 24 of the Agreement provides that the first party shall handover the possession of the second floor [completely furnished] within 16 months after signing of the Agreement to the second party i.e on 23.12.2012. It is apposite to extract Clause 24 of the Agreement below:

“24. First Party shall handover the possession of the second floor (completely furnished) within 16 months after signing of the agreement to the Second Party. If First Party fails to handover the possession after constructing the building in 16 months, then as much time which will be taken in completing the building, amount of Rs.20,000/- for each month will be paid by the First Party to the Second Party as a fine. If Second Party cause delay in making payment for that much time (days), then those days will not be counted in completion of the building within 16 months. If Second Party does not make the payment to the First Party at the right point of time, then whatever loss which will be suffered) First Party shall not be responsible for it and its fulfilment shall have to be made by the Second Party,”

[Emphasis Supplied]

(iii) Thereafter, a receipt was executed between the parties on 28.11.2012 in terms of which it was stated that the total sum received by the first party [Petitioner/Defendant] till signing was Rs. 95 lacs and the balance payment would be paid by the second party [Respondent/Plaintiff] as per the terms and conditions of the Agreement. The receipt further set out that the Agreement would be extended to 23.03.2013. The receipt was also signed



by both the Petitioner/Defendant and the Respondent/Plaintiff. The relevant extract of the Receipt is set out below:

“28.11.2012

RECEIPT

*Total sum of Rs. 95,00,000/- (ninety five lacs only) received till the signing of this receipt as per agreement dated 23rd August, 2011. Balance payment shall be paid by Second Party as per terms and conditions of Agreement dated 23rd August, 2011 **[this agreement extended to 23 march 2013]***

In witness whereof, the Sellers/Owners/First Parties have signed this Receipt, on the day, month and year first above written in the presence of the following witnesses:

sd/-SMT. USHA RANI

Total received Rs. 95,00,000/- (Rs. Ninety Five Lac Only) till 28/11/2012

WITNESSES

Singed 1

Signed 2”

5. The Impugned Order has held that the suit of the Respondent/Plaintiff is maintainable and not liable to be rejected under Order 7 Rule 11(d) of the CPC. In order to better appreciate the controversy, it is necessary to reproduce the Order VII Rule 11(d) of the CPC below:

"11. Rejection of plaint — The plaint shall be rejected in the following cases—

...

(d) where the suit appears from the statement in the plaint to be barred by any law;"

6. The Petitioner has relied on Article 54 of the Schedule I of the Act to submit that the plaint is barred by limitation. Article 54 to Schedule I of the Act provides for a three-year limitation for filing of a suit for specific performance of a contract in the following terms:

<i>Article No.</i>	<i>Description of Suit</i>	<i>Period of limitation</i>	<i>Time from which period begins with</i>
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54.	<i>For specific performance of a contract</i>	<i>Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>
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7. Undisputably, the plaint was filed on 19.04.2016.

8. It is the case of the Respondent/Plaintiff that the limitation is to be calculated from the date when the Respondent/Plaintiff has notice that the performance is refused since no firm date was fixed for performance of the contract. The Respondent/Plaintiff relies on the judgment of the Supreme Court in the case of ***Katta Sujatha Reddy & Anr. v. Siddamsetty Infra Projects Pvt. Ltd. & Ors.***¹ to contend that when no time period is fixed for performance of the contract then recourse can be taken to the notices issued and the vendor's reply thereto.

8.1 The Supreme Court in ***Katta Sujatha Reddy*** case while discussing the provisions of the Article 54 of the Act wherein it was held that for the purpose of calculation of limitation under the provisions of Article 54, in a case where time period is not fixed, the purchaser can take recourse to the notices issued.

9. It is the case of the Petitioner/Defendant, on the other hand, that the plaint is barred by limitation since the Respondent/Plaintiff had notice of refusal of performance in terms of Article 54 of the Schedule to the Act on 23.03.2013 itself, the period of the limitation expired on 23.03.2016, i.e., 3

¹ 2022 SCC OnLine SC 1079



years after the date which was set fixed in the agreement between the parties since the contract was not performed till 23.03.2013.

9.1 The learned Trial Court, in the Impugned Order, after examining the contentions of both the parties has held that the case does not fall under the first part of Article 54 to Schedule I of the Act and therefore, would be governed by the second part. The learned Trial Court has found that the Agreement was mutually extended up to 23.03.2013 which means that there was no refusal on the part of the Petitioner/Defendant and thus, once the legal notice was sent and no response was received, the plaint filed was within limitation.

9.2 A review of the plaint shows that it is the case of the Respondent/Plaintiff that a sum of Rs.95 lacs had been paid by the Respondent/Plaintiff to the Petitioner/Defendant and the balance amount which remained was a sum of Rs.5 lacs. The plaint sets out that the Respondent/Plaintiff contacted the Petitioner/Defendant in the second week of April, 2013 and requested the Petitioner/Defendant to perform her part of the contract and execute the sale deed. The plaint further sets out that the Respondent/Plaintiff had sent a legal notice on 27.04.2013 for executing the sale deed and calling upon the Petitioner/Defendant to perform her part of the contract. The plaint further sets out that the Respondent/Plaintiff filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, being OMP 116/2014 captioned **Rajesh Grover v. Usha Rani** [hereinafter referred to as “Section 9 Petition”] under Clause 10 of the Agreement between the parties. It is stated therein that by an order dated 06.12.2014, an *ex parte* injunction was granted by this Court to the Respondent/Plaintiff against the



Petitioner/Defendant in respect of the title and possession of the subject property. It is further stated that on 21.03.2016, this Court had dismissed the Section 9 Petition granting the Respondent/Plaintiff liberty to avail rights for enforcement of the contract in accordance with law. The plaint lastly states that the cause of action has continued till the filing of the suit since the Petitioner/Defendant has refused to perform the contract and intends to create third party interest in the subject premises.

10. Accordingly, the question that arises before this Court is that whether the agreement in question between the parties is one in which the date is “fixed” for the performance of the agreement.

10.1 As stated above, in the present case, initially the time for payment of instalments and handing over possession of the premises was fixed for 23.12.2012, that is, 16 months from the date when agreement was signed. This time period was thereafter extended till 23.03.2013.

11. In *A. Valliammai v. K.P. Murali & Ors.*², the Supreme Court dealt with a similar issue wherein an agreement to sell was entered into between the parties. The said agreement stipulated a particular date for payment of balance consideration which was extended by a period of six months by mutual consent of the parties. The Court held that extension of time in the agreement entered into by the parties suggests that time was not the essence of the contract. Therefore, the Court held that the first part of Article 54 of Schedule I to the Act was not attracted and instead, the second part of Article 54 of Schedule I to the Act would apply in such a case of extension.

² 2023 SCC Online SC 1150



It was thus held that the period of limitation commences from the date when the plaintiff had notice that performance is refused. The relevant extract of *A. Valliammai* case is set out herein below:

*"4. A. Valliammai had entered into an agreement to sell dated 26.05.1988, Exhibit A-1, with respondent no. 3 - K. Sriram, for the sale of the Suit Property at the rate of Rs. 2,95,000/- per acre. An amount of Rs. 1,00,000/- was paid by K. Sriram to A. Valliammai as an advance. **The balance sale consideration of Rs. 31,45,000/- was required to be paid within one year from 26.05.1988, that is, by 26.05.1989. However, vide endorsement dated 26.05.1989, Exhibit A-3, the timeline for payment of the balance sale consideration and execution of the sale deed was extended by 6 months, that is, till 26.11.1989.***

7. A. Valliammai responded vide reply sent by her advocate dated 09.08.1991, Exhibit A-7. She denied having demanded the payment of Rs. 3,00,000/-. Conversely, she alleged that K. Sriram had failed to perform and abide by the agreement to sell (Exhibit A-1) within the stipulated deadline due to his inability to complete the contract. The allegations made by K. Sriram were invented to postpone the execution of the sale deed. She had submitted an application for cancellation of the layout plan due to difficulty in obtaining approval. She denied that K. Sriram had spent any money in putting up the layout. Only if the property belonging to the Trust is allotted on the east, then the property as described could be conveyed. She denied that the partition suit in O.S. no. 787 of 1985 was to be disposed of at her cost. K. Sriram was aware of the pendency. The sale deed was to be executed after disposal of the partition suit. A. Valliammai did not want to take the risk of conveying the property since the said partition suit had not been disposed of.

*22. **Article 54 of Part II of the Schedule to the Limitation Act, 1963 stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.** Section 9 of the Limitation Act, 1963 stipulates that once the limitation period has commenced, it continues to run, irrespective of any subsequent disability or inability to institute a suit or make an application.*

*23. **It is an accepted position that Rs. 1,00,000/- was paid at the time of execution of the agreement to sell (Exhibit A-1), and the balance consideration of Rs. 31,45,000 was required to be paid by 26.05.1989.** Time for payment of Rs. 31,45,000/- and execution of the sale deed was*



extended till 26.11.1989 vide the endorsement (Exhibit A-3). If we take the date 26.11.1989 as the date for performance, the suit for specific performance filed on 27.09.1995, is barred by limitation. However, we agree with the submission raised on behalf of K.P. Murali and S.P. Duraisamy, that the aforesaid time, as fixed vide the agreement to sell and the endorsement (Exhibit A-1 and A-3), was not the essence of the contract and therefore, the first part of Article 54 will not be applicable. Instead, the second part of Article 54 will apply. On the interpretation of Article 54, this Court in Pachanan Dhara v. Monmatha Nath Maity, has held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract. Therefore, we have to examine whether K. Sriram or his assignees, K.P. Murali or S.P. Duraisamy, had notice that performance had been refused by A. Valliammai and, if so, from which date."

[Emphasis Supplied]

12. The perusal of the Agreement reflects that it is an agreement for the sale of second floor with roof rights of the subject property along with car parking and other appurtenances. The Agreement also reflects that the building is to be constructed and that part of the earnest money would be paid for the construction. The Agreement provides that the sale consideration would be made in instalments. Undisputably, the Agreement has been executed prior to a building being in existence and payment for construction was made by the Respondent/Plaintiff.

12.1 Admittedly, the time for payment of instalments and handing over possession of the premises was fixed for 23.12.2012, that is, 16 months from the date when agreement was signed. This time period was thereafter extended for further three months till 23.03.2013. The record reflects that multiple receipts were executed between the parties after the signing of the



Agreement. The receipt dated 28.11.2012 acknowledges a sum of Rs.95 lacs till 20.11.2012 and also extends the agreement to 23.03.2013. On an overview of the documents, at this stage, it cannot be said that time was the essence of the contract for the agreement between the parties.

12.2 It is not disputed that the Respondent/Plaintiff had served a legal notice dated 27.04.2013 upon the Petitioner/Respondent which was received by the Petitioner/Respondent on 10.05.2013.

13. It is no longer *res integra* that when no time is fixed for performance of the contract then recourse can be taken to the notices issued and the vendor's reply thereto. The relevant extract of ***Katta Sujatha Reddy*** case in this regard is set out herein below:

“40. In this context, we may note that Article 54 of the Limitation Act provides for two consequences based on the presence of fixed time period of performance. It is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, the aforesaid circumstances do not come into play as a fixed time period was clearly mandated by Clause 3 read with Clause 23 of the agreements to sell, as explained above.”

[Emphasis Supplied]

14. Given the law as laid down in this behalf, at this stage, and without the parties leading any evidence, the question of applicability of either the first part of Article 54 of Schedule I to the Act or the second part of Article 54 of Schedule I to the Act cannot be determined.

15. The Supreme Court in ***Balasaria Constructions (P) Ltd v. Hanuman Seva Trust and Others***³ has held the suit could not be dismissed as time-

³ (2006) 5 SCC 658



barred under Order 7 Rule 11(d) CPC without proper pleadings, framing of issues, and evidence, since limitation is a mixed question of law and fact and cannot be determined without evidence. The relevant extract of ***Balasaria Constructions (P) Ltd*** case is below:

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.”

[Emphasis Supplied]

15.1 The Supreme Court in ***Vaish Aggarwal Panchayat v. Inder Kumar and Others***⁴ relied on ***Balasaria Constructions case*** has held that limitation is a mixed question of law and fact. The relevant extract of ***Vaish Aggarwal Panchayat*** case is below:

“16. After so stating, the Division Bench opined that in the facts of the said case, the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex facie reading of the plaint it could not be held that the suit was barred by time.”

[Emphasis Supplied]

16. Limitation, being a mixed question of fact and law, would be required to be adjudicated based on facts as are pleaded in the plaint. The facts of the case at hand do not show that the allegations in the plaint can be dismissed at the threshold. Clearly, the plaint sets out a detailed cause of action and whether or not the suit as filed is barred by limitation would have to be

⁴ (2020) 12 SCC 809



examined based not only on Article 54 of the Act but also on the averments in the plaint, as well as the circumstances surrounding the agreement between the parties.

17. The learned Trial Court has also rejected the contention of the Respondent/Plaintiff as to whether the Respondent/Plaintiff is entitled to the benefit of Section 14 of the Act holding that it cannot be said that the Section 9 Petition was contested by the Respondent/Plaintiff in good faith and thus, has held that the Respondent/Plaintiff is not entitled to the benefit of Section 14 of the Act. The Petitioner/Defendant has argued that the in order to avail the benefit of Section 14 of the Act, the parties should be prosecuting other proceedings in good faith and with due diligence. The learned Trial Court has found from a review of Clause 10 of the agreement that the proceedings in respect of the Section 9 Petition filed before the High Court were neither in good faith nor with due diligence in the following manner:

“(c) Whether the plaintiff is entitled to benefit of Section 14 of the Limitation Act?

The answer to the aforesaid question is in negative. It has been rightly pointed out by the Ld. Counsel for the defendant that OMP No. 116/2014 cannot be said to be contested in good faith as on perusal of Clause 10 of Agreement to Sell, it is evident that there was no arbitration clause in the Agreement to Sell dated 23.08.2011 and the plaintiff had no justification in invoking the jurisdiction of the Hon’ble High Court of Delhi for appointment of arbitrator. Clause 10 of Agreement to Sell dated 23.08.2011 is reproduced herein below:-

“10. AGAR KOI JHAGDA HO JATA HAI TO PEHLI VA DUSRI PARTY KE BEECH KA NUMAINDA DONO PARTY KA FAISLA KAREGI AGAR TAB BHE FAISLA NAHI HOTA TO DELHI HIGH COURT HI FAISLA KAREGI”

Therefore, the plaintiff is not entitled to the benefit of Section 14 of Limitation Act.”

[Emphasis supplied]



17.1 However, the learned Trial Court has held the plaint to be maintainable.

18. A perusal of the record shows that the agreement was entered into between the Respondent/Plaintiff and the Petitioner/Defendant in the vernacular [in Hindi language]. Whether or not the Respondent/Plaintiff is entitled to the benefit of Section 14 of the Act is not a question which can be decided without evidence. Thus, the conclusion that the learned Trial Court has reached in this behalf cannot be sustained.

18.1 It is settled law that for taking benefit of extension of limitation under Section 14 of the Act, there has to be evidence and relevant material on record supplied by the party seeking such benefit. The Supreme Court in ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.***⁵ held that question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. The relevant extract of ***Babulal Vardharji Gurjar*** case is set out below:

*35.1. Therefore, on the admitted fact situation of the present case, where only the date of default as “8-7-2011” has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgment or any other date of default, in our view, the submissions sought to be developed on behalf of Respondent 2 at the later stage cannot be permitted. **It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced.** Indisputably, in the present case,*

⁵ (2020) 15 SCC 1



*Respondent 2 never came out with any pleading other than stating the date of default as “8-7-2011” in the application. **That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgment.** In this view of the matter, reliance on the decision in Mahabir Cold Storage [Mahabir Cold Storage v. CIT, 1991 Supp (1) SCC 402] does not advance the cause of Respondent 2.”*

[Emphasis Supplied]

19. In view of the foregoing discussions, the Impugned Order to the extent that the Plaint is not barred by limitation is sustained, however, to the extent it gives a finding under Section 14 of the Act, is set aside.

20. The Petition is disposed of in the foregoing terms. Pending Application shall stand closed.

20.1 It is, however, made clear that the order passed today will not preclude both the parties from raising all contentions before the learned Trial Court in accordance with law. The rights and contentions of both the parties are left open in this behalf.

21. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 7, 2025/r/ha